Supreme Court, U. S.
FILED
MAR 18 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1292

OCEANIC CALIFORNIA INC.,

Appellant,

v.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,

Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,

Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One After Entry of Order by Supreme Court of the State of California Denying A Hearing

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

I.

OPINION BELOW.

The opinion of the Court of Appeal of the State of California, First Appellate District, Division One, is set forth

in Appendix A, *infra* and is also reported at 63 Cal.App.3d 57, 133 Cal.Rptr. 664.[1] The Notice received by Appellant that the Supreme Court of the State of California denied a hearing is set forth in Appendix B *infra*.

II.

JURISDICTION.

A. Procedural History.

Appellant Oceanic California Inc. ("Oceanic") sought judicial review of a decision by The North Central Coast Regional Commission, affirmed by The California Coastal Zone Conservation Commission (hereinafter referred to collectively as the "Commissions"), declaring that Oceanic did not have a vested right to complete its development known as "The Sea Ranch," located in Sonoma County, California. Oceanic claimed a vested right to complete The Sea Ranch free of retroactive regulation under the provisions of the California Coastal Zone Conservation Act of 1972, California Public Resources Code §§ 27000 and following (the "1972 Act").

The trial court found that The Sea Ranch had received precise governmental approval as an integrated, unitary project eight (8) years prior to the effective date of the 1972 Act; and that Oceanic reasonably relied in good faith upon those approvals in proceeding continuously with development over that period, incurring expenditures exceeding Twenty-Six Million Dollars ($26,000,000.00). Findings of Fact in Clerk's Transcript ("CT") at pages 533-39. But the trial court concluded that such substantial reliance, over so long a period, upon precise approvals of the entire project did not protect from subsequent retroactive regulation those portions of the project not yet completed. CT 550.

[1]We will cite the opinion herein as *Oceanic, supra,* with appropriate page citations.

The California Court of Appeal affirmed (Appendix A) and the California Supreme Court denied Oceanic's Petition for Hearing (Appendix B). Oceanic's Notice Of Appeal to this Court was filed on March 11, 1977. A copy of that Notice of Appeal is attached as Appendix C.

B. Jurisdictional Ground For a Hearing In This Court.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(2).

Oceanic contended throughout the proceedings before the Commissions, the trial court, the Court of Appeal and the Supreme Court of the State of California that Public Resources Code Section 27404 (added to the Public Resources Code by the 1972 Act), as applied to prevent it from completing development of The Sea Ranch, is repugnant to the Fourteenth Amendment of the United States Constitution in that it deprives Oceanic of its property without due process of law. When such a claim is denied by the highest state court in which review may be had, the appellate jurisdiction of this Court is properly invoked. *Cohen* v. *California,* 403 U.S. 15, 17-18 (1971); *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U.S. 282 (1921).[2]

Section 27404 of the Act provides:

> "If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission . . . any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the

[2]In the event the Court does not consider appeal under 28 U.S.C. § 1257(2) to be the proper mode for review, Oceanic requests that this statement be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. § 2103.

development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or materials."

Following the opinion of the California Supreme Court in *Avco Community Developers, Inc.* v. *South Coast Regional Commission,* 17 Cal.3d 785, 132 Cal.Rptr. 386 (1976), the Court of Appeal in *Oceanic* construed the term "building permit" in Section 27404 to mean the permit issued as a mere *ministerial* act by a building inspector once he is satisfied that the builder will use materials and techniques required by code to insure structural integrity, diminution of fire and health hazards, and the like, rather than the discretionary approvals issued by a Planning Commission as to a project's location, site preparation, density, design and the like. This interpretation denies to land owners vested rights to proceed with development, no matter how precisely the proposed land use may have been defined and approved, and regardless of the degree of reliance upon such definition and approval, simply because a certificate totally irrelevant to the approval process has not yet issued.[3] Since the issuance of a building permit is not only a perfunctory act, but also the last act prior to the construction of improvements, the Court of Appeal's holding grants the State an option to reverse all of its planning approvals up to the eve of the actual construction of a residence. For developments such as The Sea Ranch, the construction of a residence is akin to finishing the top floor on a fifty (50) story skyscraper. (*Post,* pp. 20-21.)

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[3]The issuance of a building permit is a ministerial act. If building code requirements are met, as, for instance, the use of copper as opposed to plastic pipe for plumbing, the permit must issue. *Ellis* v. *City Council,* 222 Cal.App. 2d 490, 35 Cal. Rptr. 317 (1st Dist. 1963).

III.
THE QUESTION PRESENTED.

Can a state intentionally induce a property owner to expend tens of millions of dollars over a continuous eight (8) year development period in reasonable reliance upon precise approval of the development project and then retroactively apply a regulatory statute to stop development of that project without depriving the affected owner of its property in a manner which violates the Fourteenth Amendment of the United States Constitution?

IV.
STATEMENT OF THE CASE.

A. The 1972 Act.

The people of the State of California adopted the 1972 Act by Initiative. The 1972 Act created a regulatory structure consisting of the State Commission and six Regional Commissions to plan for coastal conservation and protection of the coastal environment during a three-year planning period. The product of this effort was to be presented to the Legislature either to be adopted as law or to serve as the foundation for other legislation. Pub. Res. Code § 27320.

During the planning period established under the 1972 Act, any person desiring to undertake "development" within a specified area adjacent to the Pacific Ocean was required first to obtain a Coastal Development Permit. Pub. Res. Code § 27400. The Commissions could issue permits for development within the "permit area" only if they could find that the development proposed would not interfere with the objectives of the plan under preparation. Pub. Res. Code § 27402, referring to Pub. Res. Code § 27302. As a practical matter, this provision meant that *no* development

could be permitted unless it was found consistent with conservation objectives *not yet articulated.* The Commissions could hardly make such findings with respect to any substantial development or large-scale project before they finished the plan—and history records that they did not do so.

Pub. Res. Code § 27404, quoted above, provided for a vested rights exemption from the permit requirements of the 1972 Act.[4] No other exemption was available. An owner of property within the permit zone became subject to additional stringent regulations under the 1972 Act regardless of the degree of precise approval previously granted by agencies of the State of California, the degree of reliance placed upon that approval and the progress made in carrying out the plan contemplated therein, unless the proposed development could fit precisely within the language of Section 27404.

At the conclusion of the planning period, the State Commission presented its plan to the California Legislature. *California Coastal Plan,* California Coastal Zone Conservation Commissions (December 1, 1975) (referred to herein as the "Coastal Plan"). The Legislature responded by enacting the California Coastal Zone Conservation Act of 1976, (Stats. 1976, chap. 1330, 1331, adding Pub. Res. Code §§ 30000 and following, referred to herein as the "1976 Act"). With minor modifications, the Legislature has kept the administrative structure in place while *continuing* the

[4]This Section provides the only exclusion from the regulatory provisions of the Act available to a private developer. In *San Diego Coast Regional Commission v. See The Sea, Limited,* 9 Cal. 3d 888, 109 Cal. Rptr. 377 (1973), the California Supreme Court fashioned an additional narrow exemption by a statutory interpretation which is not applicable here.

planning period.[5] In the meantime, under the 1976 Act, as under the 1972 Act, no person can proceed with development in a permit zone (larger under the 1976 Act than it was under the 1972 Act) without a permit—and *no* permit will be issued unless the proposed development can be justified by reference to guidelines *not yet articulated.* Pub. Res. Code §§ 30600, 30601, 30604(a).[6]

Accordingly, even if the Commissions in good faith merely sought a perfunctory review over the unfinished portion of The Sea Ranch under the 1976 Act, they could not exercise such review because there is no finalized, definitive land-use plan under the 1976 Act now, nor will there likely be one until 1981, *seventeen* (17) years after the first precise approval of The Sea Ranch as a definitive project. However, the Commissions do not seek to review the unfinished portions of The Sea Ranch under the 1976 Act; rather *they have publicly declared their intent to prevent any further development of The Sea Ranch.* Despite the

[5]On its face, many differences appear between the 1976 Act and the 1972 Act. For example, the 1976 Act purports to turn over the planning function to local government. Pub. Res. Code § 30500. But no local government can proceed until its plan has been "certified" by the Commission as consistent with goals of coastal conservation and protection. Pub. Res. Code §§ 30512-30522. This process is expected to require a period of additional planning through the year 1981. Pub. Res. Code §§ 30300, 30305.

The 1976 Act purported to abolish regional commissions, providing for their reconstitution only in the event that they were required to assist the State Commission with its workload. Pub. Res. Code § 30304.5. The Regional Commission (and other regional commissions) were "reconstituted" almost immediately. In fact they were never disbanded, maintaining offices, staffs and payrolls continuously through the period during which the State Commission was supposedly considering whether or not it could get along without them.

[6]Pub. Res. Code § 30608 provides for continuation of a vested rights exemption using language substantially similar to that of Pub. Res. Code § 27404. A development exempt from the 1972 Act upon constitutional grounds is also exempt from the 1976 Act unless the exemption has been lost by abandonment, etc.

lack of a final, definitive plan for coastal regulation, the Commissions have stated that they view Oceanic's plan for completion of The Sea Ranch as inconsistent with (i) the Coastal Plan, (ii) the Commissions' view of their mission, (iii) their interpretation of the 1972 Act; and (iv) their interpretation of the 1976 Act.[7] In short, the Commissions seek to use the 1976 Act as they used the 1972 Act, as a device to revoke all of the approvals previously granted for The Sea Ranch while retaining at no cost to the public and enormous loss to Oceanic (as well as to members of the public with whom it has dealt in good faith) all of the benefits, public dedications and the like provided by Oceanic to fulfill conditions of the approvals granted.

B. The Sea Ranch Development And The Approvals Granted For It.

The Sea Ranch encompasses approximately fifty-two hundred (5,200) acres, bounded on the west by the Pacific

[7]See, for example, I State Coastal Reporter No. 13, page 12 (October 23, 1973); I State Coastal Reporter No. 14, pages 4-5 (November 9, 1973); I State Coastal Reporter No. 19, pages 13-15 (January 16, 1974); I State Coastal Reporter No. 21, pages 2-3 (February 11, 1974); I State Coastal Reporter No. 23, pages 1-6 (March 18, 1974); I State Coastal Reporter No. 25, pages 17-20 (April 22, 1974); II State Coastal Reporter No. 2, pages 7-8 (June 25, 1974). I State Coastal Reporter No. 14, pages 4-5 reports a strong public statement by the Chairman of the State Commission, speaking for the Commissions, in response to criticisms from the Governor declaring the intent of the Commissions to prevent development of The Sea Ranch at the levels approved by the County of Sonoma. That statement, made in November of *1973*, prior to Oceanic's application for exemption and three (3) years prior to presentation of the Coastal Plan to the California Legislature, demonstrates the extreme bias of the Commissions. In short, they had decided to "stop The Sea Ranch" before the planning process had fairly begun. Thus, Oceanic's right to be free of the regulation raises a serious question which cannot be answered by simply observing that if the plan for The Sea Ranch evidences the sensitive concern for environmental considerations which the County and Oceanic built into it from 1964 onward, then the Commissions would permit development to proceed. See *Urban Renewal Agency* v. *California Coastal Zone Conservation Commission*, 15 Cal.3d 577, 125 Cal.Rptr. 485 (1975).

Ocean, on the east roughly by the first ridge line, on the north by the mouth of the Gualala River (which also forms the boundary between Sonoma and Mendocino Counties) and on the south by a boundary approximately ten (10) miles southerly of the mouth of the Gualala River, running from the ocean to the ridge. CT 532. Oceanic purchased the property to develop it " 'as an integrated whole under a planned community concept offering for sale to the public a choice of condominium units, residential cluster development constructed by Oceanic or by third parties, and subdivided lots which Oceanic would prepare for construction of single-family dwellings by the purchasers under a restrictive and particularized plan of architectural control.' " *Oceanic, supra,* 63 Cal.App.3d 62-63; 133 Cal.Rptr. 667. (Quoting from the findings of the trial court).

In 1964, Oceanic obtained planned community zoning for the southerly eighteen hundred (1,800) acres of The Sea Ranch. The application was supported by an intensive analysis of the land, including studies of soils conditions, vegetation, wind, weather and precipitation, erosion control and range management. These studies were presented as part of Oceanic's zoning application, and became a part of the approval subsequently granted, for the express purpose of requiring control of all human activities on The Sea Ranch by precise constraints, applicable to the entire property, to achieve the goals of a precise plan of use and environmental protection. *Oceanic, supra,* 63 Cal.App.3d at 63; 133 Cal.Rptr. at 667.

The controls imposed by the County in 1964 included (i) locating each lot by reference to environmental constraints, (ii) restricting the buildable area on each lot by scenic easements, view corridors and other restraints, (iii) controlling size, weight, bulk, exterior appearance (down to the color and composition) of all structures, (iv) restricting plantings to indigenous species, and (v) requiring pres-

ervation of open space on all lots and common areas in their natural states. Oceanic commenced development under these controls in 1964.[8]

The initial approval applied to the southerly eighteen hundred (1,800) acres of The Sea Ranch. Many of the studies and analyses presented to support the initial zoning approval applied to The Sea Ranch as a whole, however. With its first planned unit development application, Oceanic demonstrated that it would have sufficient utility service and governmental infrastructure to carry through completion of The Sea Ranch as a whole on the full fifty-two hundred (5,200) acres, for the full fifty-two hundred (5,200) units. CT 539. Among other things, in 1964 Oceanic (i) obtained a permit to appropriate water from the Gualala River sufficient to serve fifty-two hundred (5,200) units

[8]CT 537. Many of these controls are implemented through a declaration of covenants referred to by the parties as The Sea Ranch Restrictions. The role of The Sea Ranch Restrictions as a development control device is described in the Reporter's Transcript ("RT") 76-97; 164-165; 179-80 and 185. The Commissions have admitted that The Sea Ranch Restrictions provide for precise definition of improvements to be placed upon lots at The Sea Ranch controlling siting of each building, exterior appearance as well as the size thereof. The Commissions made The Sea Ranch Restrictions a part of the overall conditions upon which permits would be granted to lot owners for construction of houses on lots purchased from Oceanic. In adopting the overall conditions based in large part upon The Sea Ranch Restrictions, the Regional Commission stated:

> "These overall conditions represent a complete, thoughtful and considered analysis of those issues which must be addressed to enable granting of permits during the Commissions' planning. *All owners of single-family lots at The Sea Ranch who intend to build during this period may confidently act in reliance upon these conditions.* This statement is intended to remain permanent during the planning period . . ." (Emphasis in original)

Vol. I, *State Coastal Reporter* No. 23, page 3 (March 18, 1974). In the State Courts, the Commissions argued that The Sea Ranch Restrictions were too vague to constitute a precise approval by the County of Sonoma of improvements to be placed on lots at The Sea Ranch and whether vague or precise, they could not form a proper basis for reliance as a matter of law.

(Administrative Record ("AR") 327-28) (ii) incorporated a public utility company to provide utility services for the project, and (iii) endowed a homeowners' association with sufficient quasi-governmental power to perform the necessary administrative functions required to service the area.[9]

The Sea Ranch is located in a remote rural area. Oceanic had to demonstrate the ability in 1964 to provide essential services from scratch. RT 162-64. For these and for other reasons, the County approved planned community zoning in 1964 for eighteen hundred (1,800) acres, with knowledge that Oceanic intended to develop the entire fifty-two hundred (5,200) acres in accordance with the initial concept. CT 533.

In 1968, Oceanic obtained planned unit development zoning for the balance of The Sea Ranch. CT 537. The County viewed this zoning as an application of the zoning concepts and land use constraints embodied in the 1964 zoning. CT 537. RT 42-44, 48-49.

In 1972, the County adopted a general plan for the portion of the County in which The Sea Ranch is located and a specific plan for The Sea Ranch in order to respond to the requirements of a revised State Planning Act. California Government Code §§ 66474, 66474.5. *Oceanic, supra,* 63 Cal.App.3d at 63, 133 Cal.Rptr. 667. The specific plan restates the planning criteria approved pursuant to the 1964 and 1968 planned community zoning. Moreover, it locates all of the single-family residential lots then remaining within the boundaries of the Commissions' permit jurisdiction. It required that The Sea Ranch Restrictions be made applicable to each subdivision subsequently approved

[9]The Regional Commission declared final subdivision work in Units 35A, 35B and 35C exempt in June of 1973 (CT 542). Tentative subdivision maps and improvement contracts had been approved prior to the effective date of the Act. The exemption did not include the right to construct residences on those lots.

at The Sea Ranch and it precisely depicted all of the areas previously subdivided. In short, the specific plan provided an exact land-use plan for future development in accordance with the precise criteria laid down in the past, including criteria which precisely detail the structures permitted to be built on each lot. CT 536, 538-39. *Oceanic, supra,* 63 Cal.App.3d 63-64, 133 Cal.Rptr. 667-68.

As part of the initial approval, Oceanic was required to assure public access to the Coast. The County and Oceanic agreed upon dedication of a one hundred twenty (120) acre park which Oceanic deeded to the County in 1969. The instrument of conveyance recites that the park was dedicated to provide public recreational use of the coast pursuant to an overall land-use plan for The Sea Ranch as a unitary development. See AR 2243, 2245.

C. The Sea Ranch As Of The Effective Date Of The 1972 Act.

As of the effective date of the 1972 Act, The Sea Ranch consisted of two thousand (2,000) fully developed lots with another one hundred fifty (150) lots approved for development. CT 542, 545, AR 2077. Substantially all land lying within the permit zone was finally plotted and either sold, dedicated to the public or set aside as common area open space.

Of the more than two thousand (2,000) lots, condominiums and cluster units shown on final subdivision maps, more than fifteen hundred (1,500) had been sold to members of the public. CT 545. Purchasers of lots had constructed three hundred fifty (350) residences. CT 545. Oceanic had constructed a lodge, store and post office facility as well as recreational amenities, including tennis courts, swimming pools and a golf course. CT 545. The recreational amenities had been conveyed to The Sea Ranch Association

and The Sea Ranch Association had constructed other amenities. Oceanic had permits to construct three (3) wastewater treatment plants and had undertaken construction of two (2) of the plants. It had completed arrangements for utility services for all of the units and had expended Twenty-Six Million Nine Hundred Thousand Dollars ($26,900,000.00) in direct project expenditures. *Oceanic, supra,* 63 Cal.App.3d at 64, 133 Cal.Rptr. 667-68.

The trial court found that all of this work had proceeded in direct and reasonable reliance upon precise approval by the County of a plan for development of the entire Sea Ranch as an integrated and unitary whole. CT 533.

D. The Portions Of The Sea Ranch Yet To Be Completed As Of The Effective Date Of The Act: The Vested Right Oceanic Seeks.

The initial plan for The Sea Ranch, approved as an integrated whole, provided for five thousand two hundred (5,200) units. Oceanic seeks the right to complete the development as approved.

Such a vested right includes four rough categories of development work:

(a) The first category is the right to construct single-family residences on all lots either finally platted on the effective date of the 1972 Act or where the final subdivision work has been declared exempt from the 1972 Act by the Regional Commission.[10] Single-family residences may

[10]The Commissions relied in large part upon cases such as *Hill* v. *City of Manhattan Beach,* 6 Cal.3d 279, 98 Cal.Rptr. 785 (1971), and *Gisler* v. *County of Madera,* 38 Cal.App.3d 303, 112 Cal.Rptr. 919 (5th Dist. 1974), both of which hold that a property owner acquires no vested right to utilize a lot simply because it is shown on a subdivision map. But in both of these cases, the government agency which had approved filing of the original map did not grant an approval for specific improvements to be constructed on the lot. The record in this case shows that the County of Sonoma had

be constructed on such lots by complying with The Sea Ranch Restrictions and the Sonoma County Building Code. CT 537, 540-41. Because of The Sea Ranch Restrictions and the other constraints applicable to development at The Sea Ranch, a Sea Ranch lot is useful for no purpose other than construction of a specific type of single-family residence generic to The Sea Ranch.

(b) The second category is the right to construct improvements on lots or parcels shown on filed maps predating or exempt from the 1972 Act, where, in addition to approval under the Sonoma County Building Code and The Sea Ranch Restrictions, the County reserved additional architectural and siting control (a reservation general to condominium and multi-family use).

(c) The third category is the right to complete subdivision improvement work, file final maps and construct improvements in areas which have been tentatively mapped under the California Subdivision Map Act as of the effective date of the 1972 Act. Recognition of vested rights in this category would include the right to utilize the lots, as in the first two categories referred to above. Under California law, approval of a final map, which conforms to the approved tentative map, is a ministerial act. *Great Western Savings & Loan Assn.* v. *City of Los Angeles,* 31 Cal.App.3d 403, 107 Cal.Rptr. 359 (2nd Dist. 1973).

(d) The fourth category includes the right to carry out the development plan with respect to those portions of the project where the plan has not been reduced

(Continued)

through a combination of zoning and subdivision approvals created controls so specific as to lots at The Sea Ranch that all use of the lots was determined down to the exterior appearance, color and composition of the improvements which could be constructed and identification of specific species of vegetation which could be planted thereon, all others being prohibited.

to tentative planning or specific delineation of parcels on The Sea Ranch specific plan. Most of this area lies outside of the permit zone created by the 1972 Act, although it lies within the Commissions' claimed permit jurisdiction under the 1976 Act. Oceanic's claim with respect to this category of property and the category described in subparagraph (b) above also raises an issue of tolling.[11]

RAISING THE CONSTITUTIONAL ISSUE

Oceanic raised the constitutional issue at the outset of its exemption application before the Regional Commission AR 15. It reiterated its claim in its Petition for Writ of Mandate in the trial court. CT 5. The Constitutional argument provided the cornerstone for Oceanic's argument before the California Court of Appeal (Appellant's Opening Brief, pages 64 through 104) and its Petition for Hearing before the California Supreme Court (Petition For Hearing, pages 20 through 28).

Oceanic argued that Public Resources Code § 27404 could be applied to The Sea Ranch in a manner consistent with the Fourteenth Amendment of the United States Constitution *only* if the term "building permit," as used in that Section, was construed in a broad, descriptive sense to mean permission for construction and development of a definitive project. The California courts have rejected that argument.

[11]While the Commissions have claimed jurisdiction to stop development of The Sea Ranch and while the issue has been fought out in these proceedings at the administrative and judicial level, development has necessarily stopped. The Commissions now contend that they are entitled to the benefits of that delay, whatever the outcome of this case. In dealing with any of the vested rights claims which Oceanic has raised, the Court must also settle the question of whether or not any vested rights originally possessed have been lost through the passage of time consumed by the administrative and judicial proceedings. See *Oceanic, supra,* 63 Cal.App.3d 74-75, 133 Cal.Rptr. 674.

Instead, they have construed the term strictly as applying solely to the permit issued by the municipal officer charged with responsibility for insuring that buildings meet structural and fire safety requirements. Conferring such status upon a mere ministerial act is repugnant to the Constitution of the United States.

THE FEDERAL QUESTION PRESENTED BY THIS CASE IS SUBSTANTIAL

The substantial federal question directly raised by this case is simply this: may the State grant a precise series of development approvals, specifically contemplating major work under a rigid plan of development control, induce reasonable reliance upon those approvals over an eight (8) year development period by the developer and members of the public to whom the developer offers its product, require expenditures of tens of millions of dollars, formation of public utility companies, dedication of major park areas, construction of major recreational facilities, creation of wide areas of open space and then repudiate the plan without violating the constitutional rights of those who have reasonably relied upon it? Oceanic respectfully submits that this is a vital federal question which must be answered in the negative.

The question is particularly timely for two reasons: First, this Court has not addressed the issues raised by a claim of vested rights to a nonconforming use under local land-use regulation since *Reinman* v. *Little Rock,* 237 U.S. 171, 59 L. Ed. 900, 35 S. Ct. 511 (1915) and *Hadacheck* v. *Sebastian,* 239 U.S. 394, 70 L. Ed. 348, 36 S. Ct. 143 (1915). These cases were decided before comprehensive land-use regulation became the rule rather than the exception. The passage of time, coupled with the increasing importance and more

restrictive nature of land-use regulation would justify re-examination of this important question of itself.

But there is an additional, urgent reason for re-examination of the issue. The fundamental nature of land-use regulation has changed. See, *e.g.*, Bosselman, *The Quiet Revolution In Land Use Control* (Council on Environmental Quality, 1971). Land-use control has evolved away from a *general* pattern of permitted uses. It has become a system of response to specific proposals. Specific developments are examined on an individual basis with reference to a specific parcel of property. If permitted, the development is subjected to specific controls, requiring service to the public interest by specific dedication of specific considerations the public desires from the specific property owner but cannot afford to purchase outright. The Coastal Plan itself is replete with policies the State Commission hopes to implement in exactly this manner. See also Bosselman, Feurer and Siemon, *The Permit Explosion* (Urban Land Institute 1976). Such a procedure is not merely pregnant with enhanced opportunity for estoppel; *inducing reliance becomes an express and intended instrument of policy.*

In *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926) this Court noted that concepts of the police power must be evaluated in terms of their response to contemporary conditions. We respectfully submit that the time has come for this Court to re-examine the concept of vested rights in the light of the contemporary land-use control process which is not "zoning" in the traditional sense. In this case, it constituted site-specific analysis of a specific development proposal for specific property, with the development approved as a whole in a manner which induced massive reliance, not only by a developer, but by those with whom the developer has dealt in good faith over a period of eight (8) years.

A claim of vested rights raises a substantial due process question under the Fourteenth Amendment of the United States Constitution. The measure of vested rights turns upon questions of fundamental fairness in context. Where, as here the contemporary land-use approval process has provided all elements of an estoppel, requiring the issuance of a building permit, a mere ministerial act, as a *sine qua non* for a vested right is inequitable as well as irrelevant.

ARGUMENT

I. Oceanic Claims A Vested Right To Complete Development Of A Nonconforming Use: The Right To Complete And Maintain Nonconforming Uses Against Retroactive Police Power Regulation Is A Right Protected Under The Fourteenth Amendment Of The United States Constitution.

A. A So-Called "Vested Right" To Complete A Development As Against Subsequent Regulation Applies The General Principle That Land Use Regulations Cannot Require Immediate Removal Of Established, Nonconforming Uses.

Unless a zoning ordinance allows reasonable and fair continuation of nonconforming use, it violates the user's right to due process of law. *E.g. Jones* v. *City of Los Angeles,* 211 Cal. 304, 295 P. 14 (1930); *Shifflett* v. *Baltimore County,* 247 Md. 151, 230 A.2d 310 (1967); *Harbison* v. *City of Buffalo,* 4 N.Y.2d 553, 176 N.Y.S.2d 598, 152 N.E.2d 42 (1958); *City of Seattle* v. *Martin,* 54 Wa.2d 541, 342 P.2d 602 (1959). When a nonconforming use has been fairly started under a prior approval, it is treated as an accomplished fact as against the subsequent regulation.

Professor Anderson has collected the authorities from all jurisdictions dealing with the question of when a non-conforming use is considered established. He has discussed

them exhaustively in 1 American Law of Zoning, Sections 6.20-6.31, pages 398 through 434 (2d Ed. 1976) and it would add undue length to this brief to cover the same ground. As he notes, most jurisdictions hold that a property owner acquires a vested right to complete construction which has begun upon the basis of a valid permit issued and relied upon in good faith prior to enactment of the prohibitive zoning ordinance. *E.g. Phoenix City Council* v. *Canyon Ford, Inc.,* 12 Ariz. App. 595, 473 P.2d 797 (1970); *Dingeman Advertising Inc.* v. *Algoma Township,* 393 Mich. 89, 223 N.W.2d 689 (1974); *Hillsborough* v. *Smith,* 276 N.C. 48, 170 S.E.2d 904 (1969); *Twin Rocks Watseco Defense Committee* v. *Sheets,* 15 Or. App. 445, 516 P.2d 472 (1973); *Gallagher* v. *Building Inspector,* 432 Pa. 301, 247 A.2d 572 (1968); *A. Ferland & Sons, Inc.* v. *Zoning Board Of Review,* 105 R.I. 275, 251 A.2d 536 (1969).

But the critical question is: what has been permitted? If the measure is estoppel, then the precision of the permit, the intent to induce reliance and the degree of reliance induced are the critical criteria. The *type* of permit should not be a controlling factor.

B. The Basic Measure Of Vested Rights Is Equitable Estoppel, The Standard Of Reasonableness Which Is The Primary Root Of Due Process.

Almost all of the foregoing cases require that the property owner base his claim for vested rights upon a building permit. But the cases deal with factual situations in which there is *no specific approval* of the intended project by a public body *prior* to issuance of the building permit. For example, in *Anderson* v. *City of Pleasant Hill,* 229 Cal. App.2d 79, 40 Cal.Rptr. 41 (1st Dist.), *hearing denied* (1964), the California Court of Appeal observed that vested rights depend upon an equitable estoppel and "where no

such (building) permit has been issued, it is difficult to conceive of any basis for such estoppel." 229 Cal.App.2d *supra* at 89, 40 Cal.Rptr. *supra* at 45. *Humble Oil & Refining Co.* v. *Worthington,* 49 Misc.2d 432, 267 N.Y.S.2d 794 (1966), is another case similar to *Anderson* in which the Court requires a building permit but states that equitable estoppel is the principle upon which a claim of vested rights must be based. [12]

Under the new approach to land-use regulation exemplified by the record in this case, the rationale for the building-permit approach no longer applies. It is not difficult "to conceive of a basis for estoppel" on the record here, to paraphrase *Anderson.* When the government approves an entire, large-scale project as a unified whole, it knows that commencement of work on the first phases (particularly when that work includes provision of essential utility work, creation of quasi-governmental facilities and dedication of recreational open spaces for the needs of the project as a whole) is tantamount to construction of the foundations and

[12]Professor Krasnowiecki puts the building permit requirement into proper perspective. Krasnowiecki, "Legal Aspects Of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965):

> "Traditionally, of course, the courts have been reluctant to tie the hands of government in favor of an individual who acts on the faith of an understanding that the law will not be changed to prevent completion of his project. The reluctance is based on a consideration of the damage that might be done if government, having allowed a project to go ahead, could not thereafter change its mind to protect the public interest. This view of the matter might have been compelling at an earlier age, when the points of contact between government and individual were relatively few. Today, however, almost every private activity comes in contact with government regulation; and many of these activities are themselves charged with a strong public interest. . . . the public advantage that may accrue from allowing the public authority to dishonor an approved plan . . . must, surely be balanced against the damage that may be done to an overriding public interest in better housing [and better planning] . . ." *Id.* at 56-57.

lower floors of a highrise building under a building permit. Revocation of the right to complete the one is no more permissible in equity than revocation of the right to complete the other.

Several authorities from jurisdictions other than California have supported the idea that a claim of vested rights may be based upon estoppels created by specific approvals other than building permits.[13]

All of these cases state that a specific approval for a project reasonably relied upon by a property owner cannot be revoked by retroactive regulation without doing violence to the requirements of equity and due process. *Oceanic* and *Avco Community Developers* v. *South Coast Regional Commission,* 17 Cal.3d 785, 132 Cal.Rptr. 386 (1976) illustrate that such appeals to equity do not persuade the California Courts; and Professor Anderson's treatise cites other authorities which appear to adopt California's approach.

Oceanic contends that the sharp split of authority demonstrated by these cases requires resolution by this Court. And if the test of constitutionality is one which takes into account principles of equitable estoppel and overall reasonableness, then the building permit rationale will be rele-

[13]These authorities are *DeKalb County* v. *Chapel Hill, Inc.,* 232 Ga. 238, 205 S.E.2d 864 (1974); *River Forest State Bank* v. *Village of Hillside,* 6 Ill.2d 451, 129 N.E.2d 171 (1955); *Gruber* v. *Mayor and Township Committee of Raritan,* 39 N.J. 1, 186 A.2d 489 (1962); *Ward* v. *City of New Rochelle,* 20 Misc.2d 122, 197 N.Y.S.2d 64 *aff'd,* 9 App. Div.2d 911, 197 N.Y.S.2d 128, *aff'd,* 8 N.Y.2d 895, 204 N.Y.S.2d 144, 168 N.E.2d 821 (1960); *Telimar Homes, Inc.* v. *Miller,* 14 App. Div.2d 586, 218 N.Y.S.2d. 175 (1961); *Elsinore Property Owners Assn., Inc.* v. *Morwand Homes, Inc.,* 286 App. Div. 1105, 146 N.Y.S.2d 78 (1955); *Clackamas County* v. *Holmes,* 265 Or. 193, 508 P.2d 190 (Oregon 1973); *Appeal of Diamond,* 413 Pa. 379, 196 A.2d 363 (1964); *Wood* v. *North Salt Lake,* 15 Utah 2d 245, 390 P.2d 858 (1964); *Board of Supervisors of Fairfax County* v. *Cities Service Oil Company,* 213 Va. 359, 193 S.E.2d 1 (1972); *Board of Supervisors of Fairfax County* v. *Medical Structures, Inc.* 213 Va. 355, 192 S.E.2d 799 (1972).

gated to its proper place. *A building permit may or may not be the proper measure of vested rights depending upon the facts in each case.* It is not proper in this case.

As land-use regulation gravitates more and more toward site-specific constraints imposed to achieve public objectives in furtherance of environmental preservation and aesthetics and to implement requirements that private property owners dedicate open space and recreational facilities for public use, estoppel can arise far earlier than the building permit stage. It is inequitable in the extreme for the public to impose such restraints, exact such requirements, take such dedications, induce massive reliance over long periods of time and *then* claim the right to revoke the approval in the name of a *revised* perception of the public interest, by claiming that no right has vested merely because of the lack of a piece of paper which would be issued of course in the exercise of a ministerial function.

II. Modern Land Use Control Procedures Employ Specific Approvals And Induce Reliance As A Conscious Instrument Of Policy. The Decision Below Sanctions Governmental Repudiation Of Specific Approvals Which Were Intended To And Did Induce Reliance. Such An Inequitable Result Violates The Fundamental Obligation Of Fairness Required Under The Due Process Clause Of The Fourteenth Amendment.

The form of land-use control exemplified by the record in this case seeks to achieve three general objectives: (i) more control over design to achieve public objectives in the aesthetics of structures and their placement on the land; (ii) more efficient use of the land for management of open space, public utility systems and mixing of compatible uses, and (iii) dedication of desired open space and other public facilities specifically designed to meet the needs of the area in which the development will be located. Such regulation is

most efficient in achieving the objectives when it applies to a large parcel for development under unified control.

This process requires a precise development plan, approved at the outset, with the general understanding that the project will be carried through to completion in order to achieve the public objectives. Private property owners will not engage in the costly planning and dedication procedures required by this form of land-use regulation unless they perceive this to be the intent of the regulation. A governmental reservation of a right to change the plan after it has been approved and relied upon will totally discourage the employment of these sophisticated and desirable planning techniques for the simple reason that such a reserved right would put the large initial outlays required to undertake development under such planning constraints at risk of a whimsical shift in public sentiment throughout the entire life of the development. Nobody who knows that these are the rules will play the game.[14]

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[14]See Heyman, *Frontiers Of Planned Unit Development: A Synthesis Of Expert Opinion*, 156 *et seq.* (Center For Urban Policy Research, Rutgers University, 1973):

> ". . . you cannot have large-scale planned unit development unless the developer is guaranteed at the outset that if he meets stipulated conditions . . . he will be permitted to build out roughly as originally intended."

Krasnowiecki, "Legal Aspects Of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965):

> ". . . obviously there can be nothing more discouraging to such outlay [the capital outlay required for planned unit development] than the existing uncertainty whether the plan of development, once approved, will thereafter be honored by the public authority.
>
> ". . . the position of the developer who acts in reliance upon local government representations has been left in a deplorable state of uncertainty. This uncertainty cannot but work to the detriment of the quality of housing in general. . . . no one will readily shoulder the initial expense of such a departure [from conventional layout] only to find that it has been wiped out in a change in all the relevant requirements . . ."

Oceanic cited numerous authorities to the Commissions and the California courts explaining the nature of the change in land-use regulation and how that change results in the creation of reliance upon specific plans by public and private parties alike to achieve desired public objectives. These authorities establish beyond question that conduct sufficient to create a pattern of estoppel has become a conscious instrument of public policy.[15] Indeed, while Oceanic's case was pending before the Court of Appeal, its arguments, based on the nature of the land-use control process, received emphatic support from a most unlikely source—*the Coastal Plan itself*.

The Coastal Plan states that its objectives can only be achieved by exacting concessions from private property owners in exchange for development approvals. The concessions to be exacted in exchange for the approvals are fairly prosaic. They include specific site design (Coastal Plan, pages 7, 8, 78), special treatment of sensitive utilities such as water, sewer and transportation, and the requirement that coastal developers dedicate open space (*id.* at 52-53, 77-78), recreational areas and areas which are particularly sensitive for ecological reasons. *Id.* at 152-54. The Commissions obviously do not intend to be estopped by such approvals, however. In short, they expect to exact such concessions in exchange for ephemeral approvals which they reserve the right to revoke at a later time in response to a new perception of the public interest. Presumably, they will keep this intent a secret. For if they disclose it, no property owners will cooperate with them and the Coastal Plan will not be implemented.

[15]We will not restate those arguments at length in this Jurisdictional Statement. Among those authorities are the following: Burchell & Hughes, *Notes From Planned Unit Development: New Communities American Style*, page 36. (Center For Urban Policy Research, Rutgers University, 1972); Harr, *Law And Land, Anglo-American Practices*, 14 (Cambridge, Massachusetts; Harvard and M.I.T. Press, 1965); Heyman, *Frontiers Of Planned Unit Development: A Synthesis Of Expert Opinion*, 156 *et seq.* (Center For Urban Policy Research, Rutgers University, 1973); Krasnowiecki, "Legal Aspects of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965); Marcus and Groves, *The New Zoning*, 23 (1970); Sternlieb, Burchell & Hughes, *Planned Unit Development: Theoretical Approaches, Evolutionary Framework* (Center For Urban Policy Research, Rutgers University, Exchange Bibliography No. 256, undated).

As a crowning irony, the Commissions acknowledge that they will lose their power to second-guess development when a building official who is totally divorced from the land-use control process issues a certificate of probable non-collapse with respect to a structure built in the development approved—with the exemption strictly limited only to the structure so approved. In short, the Commissions argue for a test of vested rights which would reserve to the public authority the right to repudiate sound and precise commitments in a manner which would be nothing short of fraudulent between private parties. They claim this right in the name of some higher public interest which overrides considerations of fairness and equity. But then they acknowledge a limitation on this sweeping power by reference to a totally arbitrary event which has no rational relationship to the process to which the public policy relates.

"Men naturally trust in their government, and ought to do so, and they ought not to suffer for it." *Menges* v. *Dentler*, 33 Pa. 495, 500 (1859) cited in Berger, *"Estoppel Against The Government,"* 21 Univ. Chi. L.R. 680 (1953-54). Unless governments protect that trust:

> "... every man is bound to question every act of government that affects him, and to resist whatever he does not approve—a doctrine that would make government impossible." *Menges* v. *Dentler*, 33 Pa. *supra* at 500, cited in Berger, 21 Univ. Ch. L.R. *supra* at 705.

Professor Berger concludes:

> "Repudiation of representations is dirty business, no less at the hands of the government than of its citizens. Hence, the claim of immunity for governmental repudiation is tolerable only to the extent that it rests on inescapable compulsions arising out of the needs of government." Berger, *supra* at 707.

He finds such "inescapable compulsion" only where the repudiated representation deals with a matter beyond both the apparent and real authority of the representing agency. Even here, he would sharply limit the power of repudiation.

> "... [A] democratic government which rests on consent of the governed should take care in every part of the system, as Daniel Webster said, 'not only to do right, but to satisfy the community that right is done.' To preserve confidence in popular government is of higher importance than to avert occasional frauds." Berger *supra* at 684, citing 5 Writings and Speeches of Daniel Webster at 163, quoted by Mr. Justice Frankfurter, concurring in *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 149, 172 footnote 19, (1951).

A government which employs induced reliance as a *conscious instrument of policy* should be compelled to adhere to the actions which induced the very commitments the government initially sought to obtain. The concept of fundamental fairness embodied in the due process clause of the Fourteenth Amendment demands nothing less.

Such a rule imposes no great burden upon government. A government which does not wish to be estopped need only say so openly, expressly reserving the right to change its mind in circumstances where a reasonable person might reach a contrary conclusion. Private persons live with such a requirement in all of their dealings with each other and suffer no great strain. A government which wishes to

change its mind after being estopped can terminate nonconforming use by condemnation or through provision of amortization periods, formalized avenues for orderly revision of policy where previous policy has coalesced into accomplished development. In short, the rule enunciated by the California Courts in *Oceanic* and *Avco* sanctions the exercise of a power both overbroad and arbitrary to serve no compelling governmental need.

CONCLUSION

If the State of California, on the pretext that one final ministerial act (the issuance of a building permit) had not yet been performed, is permitted to revoke retroactively precise, specific and complete approval of The Sea Ranch after Oceanic has reasonably relied upon those approvals over an eight (8) year period at a cost of Twenty-Six Million Dollars ($26,000,000.00), the result will not only deprive Oceanic of a vested property right without due process of law, it will forever prevent the use of socially and environmentally desirable land use planning procedures in the State of California and elsewhere.

For these and all of the foregoing reasons, the Court should note probable jurisdiction in this case pursuant to 28 U.S.C. Section 1257(2).

Dated: March 16, 1977.

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APPENDIX A

IN THE

Court of Appeal of the State of California
First Appellate District—Division One

OCEANIC CALIFORNIA INC.,
Plaintiff, Appellant and Respondent,

v.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Defendents, Respondents and Appellants.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Respondents.

1 Civil 37893
Sup. Ct.
No. 680-724

Appellant, a land developer, has appealed from a judgment that denied its petition for a writ of administrative mandamus in which it sought, among other relief, a judgment that it was entitled to an exemption from the provisions of the California Coastal Zone Conservation Act of 1972 (Pub. Resources Code, § 27000 et seq.) to the full extent requested in its application (see 14 Cal. Admin. Code, §§ 13700-13707; and State of California v. Superior Court [Veta Company] (1974) 12 Cal.3d 237, 249-250) that had been denied by each of respondent commissions. The respondent commissions have filed a cross-appeal in which they seek review of rulings of the court with respect to the admission of evidence and settlement of the findings.

Petitioner concedes that it has not secured a building permit, as required by the provisions of section 27404 of the Public Resources Code.[1] It contends that under the particular circumstances of this case, a sequence of approvals and actions taken pursuant to a planned unit development zoning approval, it acquired a vested right to complete the development; and that, therefore, section 27404 should be construed in a manner which would recognize the developer's vested right, or it should be disregarded on the grounds that it is not the exclusive statutory measure of rights under the Coastal Act, or it should be voided on the grounds it is unconstitutional as applied to this development. As is noted below the principle predicates upon which the developer's contentions must rest have been advanced and refuted in the recent decision in *Avco Community Developers, Inc.* v. *South Coast Regional Com.* (1976) 17 Cal.3d 785, as modified 18 Cal.3d at p. ..... There are some factual differences in the two cases, and further arguments have been advanced in this case. Nevertheless, we do not find them controlling. The judgment must be affirmed.

The affirmance of the judgment renders it unnecessary to consider the commissions' protective appeal. We, therefore, do not determine the delicate question of whether the determination of whether a vested interest exists, as distinguished from the question of the rights appertaining to such

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[1]Section 27404 provides:

"If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material."

an interest, requires the exercise of independent judgment by a court reviewing an administrative decision, or merely a determination that there is substantial evidence in the light of the whole record to sustain the administrative finding. (Code Civ. Proc., § 1094.5, subd. (c). Cf. *Mobil Oil Corp.* v. *Superior Court* [Air Pollution Control District of San Diego County] (1976) 59 Cal.App.3d 293, 304-305 [hg.den. Sept. 8, 1976], with *Transcentury Properties, Inc.* v. *State of California* (1974) 41 Cal.App.3d 835, 844; and note *Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d at p. 796, fn. 7; and *Aries Dev. Co.* v. *Coastal Zone Conservation Com.* (1975) 48 Cal.App. 3d 534, 545.) Nor do we determine whether the trial court erred in receiving testimony which was not presented to the commissions. (See § 1094.5, subd. (d).) As noted below, the conclusions of law and the judgment of the trial court are consistent with or control the adverse findings attacked by the commissions. The affirmance also renders it unnecessary to consider whether or not the developer in fact complied with the zoning ordinance, or, if not, whether the "P-C District" zoning may be attacked at this late date.

The findings furnish the following general outline of the facts. The developer "Oceanic" purchased approximately 5,200 acres on the northern Sonoma County coast in 1963 "to develop the property as an integrated whole under a planned community concept, offering for sale to the public a choice of condominium units, residential cluster development constructed by Oceanic or by third parties, and subdivided lots which Oceanic would prepare for construction of single-family dwellings by the purchasers under a restrictive and particularized plan of architectural control."

In 1964 the developer applied for planned community zoning for the southerly 1,800 acres and prepared and presented to county authorities analyses of soil conditions, of patterns of vegetation, of wind, of weather and of precipita-

tion, a program of forest management, and a series of development constraints embodied in "The Sea Ranch Restrictions," requiring all man-made improvements to preserve the environmental considerations. These studies, analyses and exhibits in many cases pertained to and affected the entire 5,200 acres and were not in every case restricted to the 1,800 acres involved in the application. The county planning commission and the board of supervisors approved the planned community zoning for the 1,800 acres with knowledge that the developer intended to develop the entire 5,200 acres in accordance with the concept as approved.

Thereafter, the developer commenced actual development on an incremental basis, applying to the county for subdivision map approval for single family residential lot developments, and for use permit approvals for condominiums and other types of developments.

In 1968 the developer applied for "P C" zoning for the remaining 3,400 acres of its holdings, and its application was approved by the planning commission and board of supervisors. In 1969 after negotiations and hearings the developer secured a resolution of the board of supervisors that it would accept a dedication of 120 acres of parkland at the northerly end of The Sea Ranch for use as a county regional park in lieu of further access corridors through The Sea Ranch, unless the developer submitted changes to plans already approved.

In 1971 legislation was adopted which required that there be a specific plan covering the area to be included within any land project for which a subdivision map was to be approved, and requiring that any tentative or final subdivision map and the provisions for its design and improvement be consistent with existing applicable general and specific plans. (Stats. 1971, ch. 1446, §§ 4 and 7, pp. 2853 and 2855, adding §§ 11526.1 and 11549.5 to the Bus. & Prof.

Code. See present Gov. Code, §§ 66474.5 and 66474.) Thereafter the developer paid the fees and costs of an independent consultant who prepared such general and specific plans under the direction of the county authorities, and such plans were adopted in 1972.

During the eight-year period prior to the adoption of the coastal initiative on November 7, 1972, the county issued various developmental approvals regarding The Sea Ranch, including not only the zoning approvals in 1964 and 1968 and the specific plan adopted in 1972, but also numerous subdivision map approvals for particular subdivision increments, use permit approvals for condominiums, sewage treatment plants and other projects, grading permit approvals where necessary to carry out development plans, and building permit approvals for structures. The developer performed substantial work and it incurred substantial expenditures in developing its land. In that respect the trial court found that over 2,000 subdivided lots have been created of which approximately 1,500 have been sold to the public. Approximately 350 single family residences and 14 condominium units have been constructed. The developer has also constructed a lodge, store facility, various recreational facilities, and other improvements of various kinds and character. It has secured a permit to appropriate water from an adjacent river to accommodate a projected over-all buildout of 5,200 units. It has obtained use permits to construct three waste water treatment plants and has undertaken construction of two of the plants. It has arranged for utility services to serve the units of the development as they have been developed. The developer had expended, prior to November 8, 1972, $26,900,000 in direct project expenditures in connection with The Sea Ranch of which $9,250,000 represented hard development costs, exclusive of engineering, architectural drawings and planning.

The property involved in the developer's application for exemption which was filed with the regional commission on May 14, 1974, varies from unsubdivided portions of The Sea Ranch designed on the specific plan map as "P C Map Use, Subject to Future Detailed Planning," to a condominium unit for which tentative map and use permits had been obtained but had expired before final approval or construction had occurred. These categories are reviewed below.

On July 11, 1974, the regional commission denied the developer's application in its entirety, and on August 14, 1974, the state commission rejected the developer's appeal. This action ensued. Other findings bearing on appellant's contentions are discussed below.

I

The trial court generally concluded, "The State of California has constitutional power to impose the permit provisions of the Coastal Zone Conservation Act upon all developers who do not meet the vested rights standard in Section 27404 of the Public Resources Code." More particularly it stated: "Although the County of Sonoma repeatedly approved the concept of a planned community development for The Sea Ranch, beginning with the 1964 zoning approval, continuing with the 1968 zoning approval, and continuing again in 1972 with Specific Plan approval, this type of general approval is not a sufficient governmental approval on which to base a claim of vested rights to develop notwithstanding the Coastal Act. Reliance upon such approval, though reasonable, does not create such a vested right. Therefore, Oceanic did not obtain vested rights to develop notwithstanding the Coastal Act as a result of either of the rezoning approvals or the Specific Plan approval;" and [¶] "The adoption of The Sea Ranch Specific Plan is not the equivalent of a building permit or

other necessary final approval required in order to obtain vested rights under the Coastal Act, pursuant to Public Resources Code Section 27404."

The developer's attack on the foregoing findings is predicated on several postulates which may be summarized as follows: First, the provisions of section 27404, which recognize an exemption from the requirement of securing a permit from the regional commission for a development if the developer had secured a building permit prior to November 8, 1972, and prior thereto had in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor, do not provide the exclusive measure of whether a developer has acquired a vested right to proceed with a development which is otherwise approved; Second, a vested right to proceed should be recognized where there is a concrete specific plan approved by governmental authority and a determination to proceed manifested by both such approval and substantial actual development in conformance with the approved plan; and Third, a recognition that planned unit development is an essential tool for achieving modern planning goals and that establishment of the vested right of the developer under such plans is proper and essential for the proper functioning of that process.

—A—

In *Urban Renewal Agency* v. *California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, the court was reviewing a judgment which overruled the regional and state commissions and authorized the urban renewal agency, a public entity to complete all phases of the urban renewal plan. Since the agency as a public body was not required to secure a building permit, the commissions acknowledged

"that an exemption can be obtained apart from the rigid building permit requirements of section 27404 . . ." (15 Cal.3d at p. 583.) The court found that the agency was a person entitled to the benefits of section 27404, and noted, "The section discloses no intent to incorporate the entire body of common law on the subject of vested rights." (*Id.*, at p. 584.)

Similarly, in *Aires Dev. Co.* v. *California Coastal Zone Conservation Com.*, supra, 48 Cal.App.3d 534, the court noted, "Although the cases speak of vested rights in terms of reliance upon a *building permit* [citations], the Attorney General, both in the court below and in his opening brief on appeal, has argued the case on the assumption that a building permit may no longer be a *sine qua non* of a vested right. He points out that under modern land development practices various governmental approvals are required before the issuance of a building permit, each approval pertaining to different aspects of the project, and suggests that a vested right might arise before the issuance of a building permit if the preliminary permits approve a specific project and contain all final discretionary approvals required for completion of the project." (48 Cal.App.3d at p. 534, fn. omitted.)

In *Environmental Coalition of Orange County, Inc.* v. *AVCO Community Developers, Inc.* (1974) 40 Cal.App.3d 513, it was recognized that there was no sound reasoning for differentiating between "development" pursuant to a building permit, and "development" pursuant to a grading permit insofar as acquiring a vested right to complete the authorized work following substantial performance was concerned. (40 Cal.App.3d at p. 523.)

In *Avco Community Developers, Inc.* v. *South Coast Regional Com.*, supra, the court noted another concession by the commissions. The opinion states, "With commendable

candor, the commission concedes that it does not deem a building permit to be an absolute requirement under all circumstances for acquisition of a vested right. It suggests that in rare situations the government may grant another type of permit, such as conditional use permit, which affords substantially the same specificity and definition to a project as a building permit, and that in such instances a builder might acquire a vested right even though the document was not designated a 'building permit.'" (17 Cal.3d at pp. 793-794.) So in this case the findings reflect that with respect to one unit of cluster development for which the developer had secured approval for specific structures at the time of subdivision approval, an exemption had been granted in earlier proceedings.

It may be assumed that literal adherence to the issuance of a "building permit" is not the *sine qua non* of the establishment of a vested right to complete one of the forms of development contemplated by the act. (See § 27103.) It is not important to determine whether that result is obtained by so construing section 27404, or by recognizing that there is a parallel common law vested rights doctrine. In either case the scope of the development which the developer has the right to complete without a coastal permit is limited by the scope of the specific development theretofore approved and permitted, and depends upon the good faith performance of substantial work and incurring of liabilities for the development so expressly authorized. The cases upon which the developer relies make this clear, and fail to support his general claim to erect structures and make improvements other than as expressly authorized prior to the adoption of the Coastal Act.

In the *Urban Renewal Agency* case the court reversed the trial court insofar as it permitted development other than that to be carried out by the applicant for exemption. (See

15 Cal.3d at pp. 585-588.) The court also laid down the following general principles which are applicable in this case: "The Coastal Act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone, and to insure that any development which occurs within the zone will be consistent with this overall objective. (Pub. Resources Code, § 27001.) To that end, substantial doubts regarding the meaning and effect of the exemption provision (§ 27404) should be resolved against the person seeking exemption. Furthermore, contrary to the trial court's characterization, application of the act's permit requirement to the private development phase of the instant project is neither 'harsh' nor 'inequitable.' If, as plaintiffs maintain, the redevelopment plan is in total conformity with the act's 'laudatory purposes,' then the private developers chosen by plaintiffs presumably will experience little difficulty in securing the requisite permits and proceeding in an expeditious manner with the completion of the project." (*Id.*, p. 577.)

In the *Aries case,* the court applied a test of whether the developer had received all necessary discretionary approvals prior to November 8, 1972, and found that the trial court erred in finding that it had. (See 48 Cal.App.3d at pp. 544-547.) As noted in the recent *Avco* case, that rule was applied only because the trial had been held on that theory. (See 17 Cal.3d at p. 795, fn. 6.)

In the earlier *Avco* case the court was careful to point out that although a vested right could be acquired by performing work under a grading permit it was limited to the completion of that work. The court stated, "We make no determination respecting defendant's contention governmental approval of its subdivision and parcel maps, including itemized 'developments' in connection therewith, under the decision in *See The Sea* [*San Diego Coast Regional*

Com. v. *See The Sea, Ltd.* (1973) 9 Cal.3d 888] or the common law doctrine of vested rights, authorizes construction of its 'projects' in toto without a coastal permit. The 'development' included in a building or grading permit is adequately defined by the terms of the permit, its nature and the law requiring such, justifying the conclusion work performed pursuant thereto is not subject to subsequent permit requirements. However, the 'development' included in the approval of subdivision or parcel maps may not be sufficiently definitive to justify the conclusion work performed pursuant thereto was part of a 'construction' or 'project' encompassing more than the preparation of land for subdivision purposes in conformity with the approved maps." (40 Cal.App.3d at pp. 524-525.)

Finally, in the recent *Avco* case the court stated, "Even if we assume arguendo that a building permit is not required in order to acquire a vested right to construct particular buildings in every case, Avco cannot prevail. As we have seen, although the trial court found that Avco had a detailed plan for the buildings to be erected on the tract, the county was not aware of and had not approved such a plan, and the preliminary approvals which it did grant did not refer to any identifiable buildings." (17 Cal.3d at p. 797.)

—B—

The third contention may be disposed of summarily. In *AVCO Community Developers, Inc.* v. *South Coast Regional Com., supra,* the developer's position, with exceptions noted below, was similar to that advanced in this case. The court noted, "Here Avco asserts that it had a vested right to construct buildings on tract 7479 without permission from the commission because prior to February 1, 1973, when the coastal permit requirement took effect, it spent large sums of money to construct subdivision improvements and grade the tract, in reliance on several county authoriza-

tions, and that these improvements were undertaken and approvals issued for the purpose of constructing buildings. Thus, Avco relies upon the doctrine of vested rights as defined in the common law and in the Act itself." (17 Cal.3d at p. 791.) The opinion observed, "Evaluation of this claim requires a determination of the point in the development process at which a landowner can be said to have acquired a vested right to construct buildings on his land. The commission contends, subject to an exception to be discussed *infra,* that a builder may not acquire a vested right prior to the issuance of a building permit, whereas Avco asserts that in the context of a subdivision a developer's right to construct buildings vests when it has subdivided the land and installed subdivision improvements such as roads and utilities pursuant to governmental authorization. Amicus curiae appearing on behalf of Avco (*Oceanic California, Inc.* and HalfMoon Bay Properties, Inc.) argue for an even earlier time of vesting in the case of a planned unit development, i.e., when such zoning is imposed on the developer's land." (*Id.,* emphasis added.)

After reviewing and approving existing precedents, the court concluded as follows: "Nor are we convinced by the importuning of amicus curiae that we should make an exception to the accepted rules set forth above because tract 7479 is part of a planned community development. Amicus suggests that a builder acquires a vested right to construct buildings at the time the government approves a planned unit development for the property. Planned unit development allows the construction of buildings on a tract free of conventional zoning so as to permit a cluster of structures, with increased density, on some portions of a tract, leaving the remainder as open space. (*Orinda Homeowners Committee* v. *Board of Supervisors* (1970) 11 Cal.App.3d 768, 772 . . .) It is asserted that planned unit development serves the public interest because it provides an excellent

means for implementing sound planning and preserving the environment, that a builder's preliminary investment in such a development far exceeds the investment required for a conventional subdivision, and that unless a landowner is assured that he can proceed with such a development in the manner initially approved by the government, he will not have the incentive to participate in a project of that type.

"We have no reason to question the merits of planned unit development. However, the approval of such a plan merely imposes a special zoning on the property. It is beyond question that a landowner has no vested right in existing or anticipated zoning. (*HFH, Ltd.* v. *Superior Court* (1975) 15 Cal.3d 508, 516 . . .; *Morse* v. *County of San Luis Obispo* (1967) 247 Cal.App.2d 600, 602 . . .; *Anderson* v. *City Council, supra,* 229 Cal.App.2d 79, 88-90.) We are aware of no authority compelling us to carve out an exception to this rule for planned unit zoning since the rule governs zoning of all other types. If there is to be a departure from settled rules for zoning of this character it must be provided by the Legislature." (*Id.,* p. 796.)

We, therefore, reject the developer's suggestion that it acquired any vested rights to conduct further development by reason of the planned community zoning or the general or specific plans adopted by the county.

—C—

Since the developer cannot establish existence of the criteria necessary to establish a vested right and an exemption under section 27404, it must rely upon common law constitutional principles. In the recent *Avco* case the court stated, "It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires

a vested right to complete construction in accordance with the terms of the permit. (*Dobbins* v. *City of Los Angeles* (1904) 195 U.S. 223 . . .; *Trans-Oceanic Oil Corp.* v. *Santa Barbara* (1948) 85 Cal.App.2d 776, 784 . . .)" (17 Cal.3d at p. 791. See also *Urban Renewal Agency* v. *California Coastal Zone Com.*, supra, 15 Cal.3d 577, 583-584; *Sierra Club* v. *California Coastal Zone Conservation Com.* (1976) 58 Cal.App.3d 149, 156-157 [hg.den. July 6, 1976]; and *Aries Dev. Co.* v. *California Coastal Zone Conservation Com., supra,* 48 Cal App.3d 534, 543.) The opinion continues with an analysis of *Spindler Realty Corp.* v. *Monning* (1966) 243 Cal.App.2d 255 and *Anderson* v. *City Council* (1964) 229 Cal.App.2d 79. After rejecting distinctions advanced by the developer, which are similar to those made by appellant in this case, the court concluded: "Despite minor factual variations *Spindler* and *Anderson* are clearly controlling; they stand for the proposition that neither the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued. By zoning the property or issuing approvals for work preliminary to construction the government makes no representation to a landowner that he will be exempt from the zoning laws in effect at the subsequent time he applies for a building permit or that he may construct particular structures on the property, and thus the government cannot be estopped to enforce the laws in effect when the permit is issued." (17 Cal.3d at p. 793. See also *HFH, Ltd.* v. *Superior Court* (1975) 15 Cal.3d 508, 518 [cert.den. 96 S.Ct. 1495]; *Patterson* v. *Central Coast etc. Conservation Com.* (1976) 58 Cal.App.3d 833, 843-845; *Davis* v. *California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 700, 708; and *Morse* v. *County of San Luis Obispo* (1967) 247 Cal.App.2d 600, 602.)

The developer, however, insists that the courts should apply a test which would recognize a vested right when the issuance of the remaining permits is only ministerial and "all final discretionary approvals required for completion of the project" have been obtained. (See *Aries Dev. Co.* v. *California Coastal Zone Conservation Com., supra,* 48 Cal. App.3d 534, 544.) In *Avco* the court apparently rejected that test by noting that the reference to that criterion in *Aries* was adopted because the case had been tried below, and briefed on appeal on that theory. (17 Cal.3d at p. 795, fn. 6.) As pointed out in *Avco,* since a building permit generally cannot be issued unless the structure complies with law, such a provision in a building code "codifies the general rule that a builder must comply with the laws which are in effect at the time a building permit is issued, including the laws which were enacted after application for the permit. [Citations.] A landowner which has not even applied for a permit cannot be in a better position merely because it had previously received permission to subdivide its property and made certain improvements on the land." (*Id.,* p. 795, fn. omitted.) A permit under the Coastal Act is required for the issuance of a building permit applied for after the effective date of that act, in the absence of an exemption.

The developer also advances a concept, not specifically addressed in *Avco,* that the "development" to be exempted from the provisions of the Coastal Act should be equated with the "project" discussed in *People ex rel. S.F. Bay etc. Com.* v. *Town of Emeryville* (1968) 69 Cal.2d 533. That case did not involve a vested right but merely a "grandfather clause" (Gov. Code, § 66632.1) which exempted certain projects which had already been commenced under specific permits. (See 69 Cal.2d at p. 536, fn. 1; and *Aries Dev. Co.* v. *California Coastal Zone Conservation Com. supra,* 48 Cal.App.3d 534, 547.) In *Emeryville* the court suggested that

in the light of the purpose of the legislation creating the San Francisco Bay Conservation and Development Commission, and the fact that the word "project" was contained in an exception to the regulatory powers adopted to carry out the objectives of that legislation, it should be construed as a term of limitation. It defined "project" as requiring "a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective. A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the operative decision to proceed toward the objective has not been made. Only when that decision has been made and a plan has been conceived in the detail ncessary for prudent commencement of physical efforts to achieve the objective does a 'project' come into being." (69 Cal.2d at pp. 545-546.) Although that definition was recognized in *Urban Renewal Agency* v. *California Coastal Zone Com., supra,* because it had been referred to by both parties (15 Cal.3d at p. 587), the court found that the development sought by the agency in fact was limited in scope, and ordered the trial court to modify its judgment accordingly. There is no solace for appellant in that decision. Here the developer, unlike the agency, was subject to the requirement of further permits and approvals before structures could be erected on his land. As noted below, the *Urban Renewal Agency* case disposes of the developer's contention that the existence of building restrictions, and interrelationship and interdependence of the unit developments gives it a vested interest to construct the entire contemplated project. The quotation set forth in part A above is a clear indication that the *Emeryville* definition of "project" cannot be used to vary either the statutory or common law concept of vested interest.

In an earlier *AVCO* case (*Environmental Coalition of Orange County, Inc.* v. *AVCO Community Developers, Inc., supra,* 40 Cal.App.3d 513) the court modified a preliminary injunction to permit the completion of grading which had been commenced prior to the effective date of the act under permits previously issued. We note that there the court stated, "On the other hand we have concluded whether defendant's 'development' of its property without a coastal permit extends to completion of its projects in toto, i.e., for the uses authorized by the planned community regulations allegedly adopted by the County of Orange, is a question which should be determined by a trial on the merits, and to the extent the preliminary injunction enjoins this latter 'development' granting such was not an abuse of discretion." (40 Cal.App.3d at p. 523.) In view of the later *Avco* case it is clear that the mere existence of planned community regulations does not give a vested right to proceed with construction of contemplated structures without a permit from the coastal commission.

In *Sierra Club* v. *California Coastal Zone Conservation Com., supra,* the court ruled, on the basis of the earlier *AVCO* case, "Whether the buildings within the development which were authorized by the building permit, but upon which no actual construction had commenced, were so interdependent with those buildings within the development which were under construction by February 1, 1973, that the actual construction was sufficient to also exempt the authorized but as yet unconstructed buildings, is initially a question of fact." (58 Cal.App.3d at p. 157.) The question there, however, was not whether the developer had a vested right to proceed without a building permit, but whether the building permit which had been issued was severable. It should be noted that the court approved the action of the state commission which denied the exemption as to other portions of the project which had been deemed

exempt as part of a total project by the regional commission (*id.*, and see p. 153).

We find no precedent for the broad concept of development urged by the developer.[2]

II

We turn to the specific categories of property involved in this case.

—A—

The developer states that the criteria for completion of The Sea Ranch are sufficiently articulated in the specific plan, the prior approvals, and the developmental history to the time of the effective date of the Coastal Act, as to entitle it to declaration that it has a vested right to complete all of the project exempt from the permit provisions of the Coastal Act.[3] This contention was completely answered by the Supreme Court in the *Avco* case. The general conclusions of the trial court which have been quoted above must be sustained.

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[2]On September 15, 1976, the Supreme Court denied a hearing, but directed the reporter of decisions not to publish the decision in *Get Oil Out! [600] Inc.* v. *California Coastal Zone Conservation Com.* (1 Civ. 37167) 60 Cal.App.3d (Adv.) 424 [. . . Cal.Rptr. . . .]. There the court had indicated, "It is evident that governmental authorization could be obtained for an integrated project consisting of several units which would individually constitute 'developments' within the meaning of section 27103, and that such project could be considered a 'development' in which the owner might have a vested right to compete in its entirety under section 27404. In fact, such was the construction placed under section 27404 in both the *AVCO* and *Sierra Club* cases, *supra*." (60 Cal.App.3d (Adv.) at p. 435 [. . . Cal.Rptr. at p. . . .]. As we have seen, neither the earlier *Avco* case nor the *Sierra Club* case warrants such a broad generalization.

[3]The developer suggests it is entitled to a declaration that the bulk of its undeveloped lands, which lie outside of the permit area, does not fall within the jurisdiction of the commissions under the Coastal Act of 1972. Since we are reviewing the action of the commissions, and they have not purported to exercise jurisdiction over those lands, such a declaration would be inappropriate in these proceedings.

—B—

The developer contends that it is entitled to an exemption, at least to complete development work and file final maps for three units for which tentative maps were approved prior to November 8, 1972.

The court found, "Tentative map and use permit approvals were obtained for Unit 8 in September of 1972, but no construction occurred pursuant thereto, and in accordance with applicable Sonoma County ordinance, these approvals expired in February, 1974." The court concluded, "With respect to Unit No. 8, the fact that tentative map approval occurred in September of 1972 does not by itself establish vested rights. The Commission was correct in concluding that no vested right was obtained by Oceanic for Unit No. 8 since Oceanic did not obtain building permit approvals and did not perform any construction in reliance thereon. Furthermore, since the approvals obtained in September of 1972 have since expired, any possible vested rights obtained by Oceanic have lapsed or been abandoned."

The court found, "In the following subdivision units, some development approvals had been obtained by November 8, 1972, but the subdivision approval and improvement process was not completed as of that date: Unit 34A, Unit 34B, Unit 35A, Unit 35B, Unit 35C and Unit 35D." It also found, "In June of 1973, pursuant to application by Oceanic, the North Central Coastal Commission granted a claim of exemption for the act of subdividing and developing off-site improvements in Units 35A, 35B and 35C. Construction of dwellings on the lots created in these Units was not determined by the Commission to be exempt"; and "With respect to Units 35B and 35D, tentative map approval was obtained in March of 1972, but no final map approval was ever obtained and in accordance with Sonoma County ordinance, the tentative map approval expired in late 1973." The court

concluded: "With respect to Units 34B and 35D, Oceanic had approval of a tentative subdivision map prior to November 8, 1972, but that does not create vested rights since no final map approval was ever obtained and no substantial reliance upon tentative map approval has been shown. With respect to Unit 34A, since Oceanic had not obtained a final map approval or other final governmental approvals prior to November 8, 1972, Oceanic does not qualify for vested rights with respect to Unit 34A under Section 27404 of the Coastal Act."

The developer apparently contends that the passage of the Coastal Act tolled its right to proceed under the tentative maps, and that the court erred in finding that the expiration of the period in which to file a final map furnishes a ground for failure to recognize a vested right. That argument is of no avail. The failure to acquire a vested right under the preexisting permit is predicated on the failure of the developer to commence performance and perform substantial work toward the prerequisites for filing a final map, as required by section 27404 and the common law. The approval inherent in the tentative maps lapsed because of the developer's failure to secure extensions of time from the county authorities to perform the requisites for a final map. The time for performance had passed when the exemption application was filed in March 1974. What the county might do under the circumstances cannot be determined in these proceedings. The commission and the trial court properly denied an exemption to do work toward recording a final map. Nothing in these proceedings precluded the developer from securing an extension of time from the county authorities or from them requesting a permit from the regional commission to proceed with the subdivisions' final approval.

—C—

The subdivider also claims a right to proceed with construction on areas on final maps which have been approved for the construction, subject to the issuance of a use permit, of condominiums and multihousing or cluster developments. The court found that one of the latter units, 29A, had been exempted previously because the structural features had been approved and work had commenced. There is nothing in the findings which would indicate that any other property in which such type of development was contemplated was the subject of any approval of any nature.

With respect to condominiums the court found: "With the exception of Unit No. 8, a large proposed condominium development, and Units 2 and 11A, small condominium developments which were completed prior to the Coastal Act, neither Oceanic nor any other developer of condominiums had obtained any tentative map, use permit, building permit, grading permit, or precise development plan approval for condominiums at The Sea Ranch prior to the adoption of the Coastal Act." The court concluded: "The weight of the evidence supports the Commission's determination that Oceanic did not perfect vested rights to complete any condominium units because on November 8, 1972, Oceanic had not obtained a building permit as required under Public Resources Code Section 27404 for any condominium project at The Sea Ranch with the exception of Unit No. 8 (and with the exception of two projects either completed or declared exempt from the Coastal Act during 1973, which said projects are not at issue herein)."

The thrust of the developer's attack is that the existing plans and approvals set a pattern which rendered the approval of the necessary subdivision maps, use permits, precise plans, grading permits and building permits mere ministerial acts in applying standards already established and

agreed upon. It is obvious that this contention cannot be sustained in the light of the law that has developed under the Coastal Act. The findings and conclusions of the trial court must be sustained.

—D—

Finally, it is asserted that the developer has a right to construct single family residences on all lots shown for that purpose on approved and filed maps. The court found, "With respect to the development of single family residential lots, Oceanic's development plans, as expressed to the County of Sonoma and to the Department of Real Estate, have been that Oceanic would subdivide lots and provide off-site improvements such as roads and utilities, but the design and construction of single family dwellings would be undertaken, in most cases, by the individual lot purchaser or his contractor and architect subject to the terms of The Sea Ranch Restrictions and the other applicable development constraints."

An additional finding reads, "Oceanic has no building permits for construction of single family dwellings on developed lots which it owned on the effective date of the Coastal Act. Once Sea Ranch lots designed for single family dwellings have been subdivided and off-site improvements constructed, the lot purchaser, or Oceanic, still must obtain building permits and septic tank or sewer permits in order to construct a single family dwelling upon any lot. Under certain circumstances, permits for site grading might also be required. The Sea Ranch Restrictions, read together with the subdivision maps and the Sonoma County ordinances, create structural constraint sufficiently specific in nature that the issuance of a building permit would be more

in the nature of a ministerial act rather than a discretionary act on the part of the County."[4]

The court concluded: "In light of the architectural controls and other requirements imposed upon Sea Ranch lot owners by The Sea Ranch Restrictions, and by the necessity of obtaining Sea Ranch Design Committee review and approval of any proposed construction, the issuance of a building permit for a single family dwelling by the County of Sonoma is more in the nature of a ministerial act rather than a discretionary act on the part of the County."

It, nevertheless, also concluded: "The weight of the evidence supports the Commissions' conclusion that Oceanic had not perfected vested rights under Public Resources Code Section 27404 for the construction of single family dwellings upon lots created by the subdivision process at The Sea Ranch because Oceanic had not obtained building permits for such houses prior to November 8, 1972."

The developer argues that in view of the fact that the issuance of a building permit is merely a ministerial act it should be adjudged to have a vested right to proceed with

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[4]The findings reflect that "The Sea Ranch Restrictions" are a recorded declaration of covenants, conditions and restrictions, which create a Design Review Committee for architectural control, and prescribe "the buildable area of a lot and limit the materials, color and style of the home sufficient to create an individual but uniform pattern throughout The Sea Ranch." Approval of each subdivision unit has been conditioned upon subjecting the property to the restrictions. The restrictions are specific and are for the benefit of every lot owner at The Sea Ranch. They have been administered and enforced in accordance with their terms. They set forth certain specific overall architectural guidelines for single family dwellings, and control is administered by the Design Review Committee, whose decisions, although not binding upon the county, have received the cooperation of the county in the issuance and denial of building permits. The court concluded, "The Sea Ranch Restrictions are for the benefit of every lot at The Sea Ranch subject thereto, and the owner of each lot may require that The Restrictions be enforced in accordance with their terms."

construction of single family homes exempt from the provisions of the Coastal Act. In *Avco* the Supreme Court was faced with a similar contention by the developer based upon the existence of a model. The court noted, however, "The model was prepared by Avco for its own use and was not submitted to the county." (17 Cal.3d at p. 794.) A footnote reflects, "Avco submitted photographs of the model, which was prepared in 1971, to the commission. It claims that the model is a 'product and synthesis' of the information supplied to the county, but there is nothing in the record to indicate that Avco had supplied the county with detailed information concerning the buildings it intended to construct on the tract." (*Id., fn.* 3) Here, on the other hand, it may be contended that the findings require a contrary result.

We have seen, however, that the Supreme Court propounded the doctrine that if the law required a Coastal Act permit at the time the building permit was applied for, no building permit could issue (17 Cal.3d at p. 795). Moreover, no matter how rigid The Sea Ranch restriction may be, they are no more than "supervising control over the type, size and use of the buildings to be constructed." (See *Urban Renewal Agency* v. *California Coastal Zone Conservation Com., supra,* 15 Cal.3d at p. 586.) The case last cited indicates that provisions for such a control does not give the developer a vested right to construct the structures so controlled (*id.*). It also infers that any Coastal Act exemption available to the developer should extent only to those projects which the developer itself intends to complete (*id.*, pp. 585-586). Here the court found that the developer had not proposed to undertake the construction of single family dwellings.[5]

[5]The court found: "With respect to the development of single family residential lots, Oceanic's development plans, as expressed to the County of Sonoma and to the Department of Real Estate, have been that Oceanic would subdivide lots and provide off-site improvements such as roads and utilities, but the design and construction of single family dwellings would be undertaken, in most cases, by the individual lot purchaser or his contractor and architect subject to the terms of The Sea Ranch Restrictions and the other applicable development constraints."

Urban Renewal Agency also lays to rest the contention that construction on the undeveloped portions should be exempted and authorized because of expenditures incurred for the benefit of the entire 5,200 acres. Although the trial court found that the various stages of the redevelopment project were financially interdependent the court concluded: "In our view, financial interdependence alone, however, is an inadequate basis on which to support the trial court's judgment herein insofar as it applies to future private development. In order to justify a blanket exemption for such prospective conduct, plaintiffs must point to substantial activities undertaken prior to November 8, 1972, in connection with a single 'development.' The record discloses that plaintiffs' active participation is largely completed and future private construction activities contemplated by the plan constitute development separate from the plaintiffs' in terms of design, and the esthetic and environmental considerations contemplated by the act. The fact that the private and public projects are financially interdependent in such a context does not appear controlling in the light of the clear intent of the act." (15 Cal.3d at p. 587.)

The trial court did not err in denying the developer an exemption for the construction of single family residences on approved lots, in the absence of the existence of specific plans for which a building permit had been issued and in the absence of work accomplished in connection with such construction. (See *Patterson* v. *Central Coast etc. Conservation Com., supra,* 58 Cal.App.3d 833, 843-845.)

—E—

Finally, we note that the trial court properly concluded, "The dedication by Oceanic of approximately 120 acres of land at the northern tip of The Sea Ranch for the purposes of creating a county regional park did not occur in a proceeding which is the equivalent of a building permit or necessary final approval required in order to obtain vested rights under the Coastal Act pursuant to Public Resources Code Section 27404." (See *Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d 785, 799-801.)

III

In conclusion we point out, as was done in *Avco,* our conclusion, that no vested right inures to proceed with development of those facets of The Sea Ranch project for which no final approval and commencement of work existed at the time of the adoption of the Coastal Act of 1972, does not strip the land of all value. "The result is merely that [the developer], like all other landowners in the coastal zone who have not acquired a vested right to develop their property, must apply to the commission for a permit and, if the application is denied, then the desired buildings on the tract cannot be constructed during the period the Act is in effect.... [T]he Act is only an interim measure designed to assure that valuable coastal zone resources are not irreversibly committed during the time the commission is developing a comprehensive plan for the orderly development of the coast, and the permit requirement will automatically be repealed 91 days after adjournment of the 1976 regular session of the Legislature." (*Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d at p. 802.)

Moreover, as noted in the *Urban Renewal Agency* case, if as the developer maintains, its planned community development is in total conformity with the Coastal Act's laudatory purpose, it will experience little difficulty in securing the requisite permits and proceedings in an expeditious manner with the completion of the project.

It now appears that on and after January 1, 1977, the development of The Sea Ranch will be subject in part to the provisions of the California Coastal Act of 1976. (Pub. Resources Code, § 30000 et seq., Stats. 1976, ch. 1330, as amended.) No opinion is expressed as to the developer's rights and obligations under that act.

The judgment is affirmed with costs incurred on plaintiff's appeal awarded to defendants and intervenors.

CERTIFIED FOR PUBLICATION

Sims, Acting P. J.

WE CONCUR:

Elkington, J.

Bray, J.*

*Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

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Trial Judge: Hon. Thomas Dandurand

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OCEANIC CALIFORNIA v. NORTH CENTRAL REG. COM. — 1 Civ. 37893

APPENDIX B

ORDER DENYING HEARING
After Judgment By The Court Of Appeal

1ST DISTRICT, DIVISION 1, CIVIL No. 37893

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

OCEANIC CALIFORNIA, INC.,
Plaintiff and Appellant,

v.

NORTH CENTRAL COAST REGIONAL COMMISSION et al,
Defendants and Appellants;

NATURAL RESOURCES DEFENSE COUNCIL, INCORPORATED, et al.,
Intervenors and Respondents

Appellant's petition for hearing DENIED.

WRIGHT
Chief Justice

APPENDIX C

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Court of Appeal of the State of California
First Appellate District, Division One

OCEANIC CALIFORNIA INC., *Petitioner and Appellant,* v. THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION, *Respondents*	1 Civ. No. 37893 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
NATURAL RESOURCES DEFENSE COUNCIL, INC., and CALIFORNIA COASTAL ALLIANCE, INC., *Intervenors and Respondents.*	

NOTICE IS HEREBY GIVEN that Appellant, OCEANIC CALIFORNIA INC., appeals to the Supreme Court of the United States from the Final Order of the Supreme Court of the State of California, entered in the

above-entitled matter on December 22, 1976, which denied Appellant's Petition for Hearing after this Court's affirmance of the judgment of the trial court.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: March 11, 1977.

HOWARD N. ELLMAN
SUSAN J. PASSOVOY
MICHAEL J. BURKE
ELLMAN, PASSOVOY & BURKE

By HOWARD N. ELLMAN
Howard N. Ellman

Attorneys for Appellant,
OCEANIC CALIFORNIA INC.

CERTIFICATE OF SERVICE BY MAIL

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.

I, HOWARD N. ELLMAN, certify and declare that I am a citizen of the United States, over the age of eighteen years, duly licensed to practice before the Supreme Court of the State of California and a member of the California State Bar and not a party to the above-entitled cause.

On March 11, 1977, I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, on the parties required to be served by depositing a true copy thereof to each, in a sealed envelope, with postage thereon fully prepaid, in a mailbox regularly maintained by the United States Post Office, City of San Francisco, State of California, addressed as follows:

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The Honorable Thomas J. Dandurand
Judge of the Superior Court
City and County of San Francisco
City Hall
San Francisco, CA 94102

Dated: March 11, 1977.

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